

REMARKS

Claim Status

Upon entry of the claim amendments and cancellation herein, Claims 1, 6, 8, 9, 23, 25 - 27, and 29 - 38 will be pending in the present application. Claims 2, 3, and 5 have been canceled. Claims 29 - 38 have been added.

Claim 1 has been amended to replace the term “high internal phase emulsion” with the term “HIPE” to maintain consistency with the terminology used in the remaining claims. As “HIPE” is merely an abbreviation for “high internal phase emulsion”, the meaning of these terms is identical and the scope of the claim with respect to this amendment is therefore unchanged.

Claim 1 has also been amended to add the words “in a form” for grammatical reasons. The scope of the claim with respect to this amendment is unchanged.

Claim 1 has also been amended to incorporate the limitation of previously pending Claim 2. Claim 2 has therefore been canceled.

Claims 3 and 5 have been canceled.

Claim 23 has been amended such that the first composition mirrors the composition recited in Claim 1. In addition, the term “and wherein the foam is a HIPE foam” in subsection (b) of the claim has been deleted since the recitation to the HIPE foam now appears in subsection (a).

Claim 27 has been amended such that the composition mirrors the composition recited in Claim 1. In addition, the term “and wherein the foam is a HIPE foam” in subsection (b) of the claim has been deleted since the recitation to the HIPE foam now appears in subsection (a). Claim 27 has also been amended to remove recitation of “prevention of Type II Diabetes”.

New Claim 29 has been added in place of former Claim 5, now canceled. Claim 5 was not rejected in the Office Action dated May 14, 2009. New Claims 30 – 32 recite compositions depending directly or indirectly from Claim 29 that further comprise a lipase inhibitor.

New Claim 33 mirrors amended Claim 23 except that the HIPE foam is characterized by its specific surface area and glass transition temperature properties rather than its density. These properties were previously recited in Claim 5, now canceled. New Claim 34 and 35 recite kits depending directly or indirectly from Claim 33 that further comprise a lipase inhibitor.

New Claim 36 mirrors amended Claim 27 except that the HIPE foam is characterized by its specific surface area and glass transition temperature properties rather than its density. These properties were previously recited in Claim 5, now canceled. New Claim 37 recites kits that further comprise a lipase inhibitor.

New Claim 38 recites kits of Claim 27 that further comprise a lipase inhibitor.

The amendments herein do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

The Rejections Under 35 U.S.C. § 112, First Paragraph

The Examiner has rejected Claims 25 – 27 based on use of the terms: non-digestible, non-absorbable, open-celled polymeric foam, vitamins, lipase inhibitors, and laxatives. Based on the text of the rejection, Applicants question whether the Examiner intended to reject Claim 23, which is the independent claim containing these terms.

In any event, Applicants have amended section (a) of Claim 23 to recite the polymeric foam with the same specifications as set forth in Claim 1 as amended herein. In addition, Applicants have amended independent Claim 23 to delete reference to vitamins and

laxatives. Applicant have retained reference to “lipase inhibitors”, consistent with the remaining claims of the invention. Indeed, lipase inhibitors, which can effectively produce *in situ* undigested fat and/or oil that can dissolve lipophilic toxins and hasten their elimination from the body, are of significant use within the kit also containing the composition comprising the HIPE foam, which can act to sequester these undigested fats and oils, thereby alleviating side effects associated with the administration of lipase inhibitors. The specification is replete with examples of lipase inhibitors (see specification, pages 21 – 25). Moreover, Claim 25 recites a specific listing of certain lipase inhibitors, as disclosed in the specification, and Claim 26 recites tetrahydrolipstatin (orlistat; XENICAL®) by structure.

The rejection of Claim 27 is now moot in view of deletion of the term “prevention of Type II Diabetes”.

Applicants therefore respectfully request withdrawal of the rejections under 35 U.S.C. § 112, First Paragraph.

The Rejection Under 35 U.S.C. § 102(e)

The rejection of Claims 1, 3, 6, 8, and 9 under 35 U.S.C. § 102(e) is now moot in view of the incorporation of the limitations of Claim 2 into Claim 1, and the cancellation of Claims 2 and 3.

Applicants therefore respectfully request withdrawal of the rejection under 35 U.S.C. § 102(e).

The Rejection Under 35 U.S.C. § 103(a)

The rejection of Claims 23 and 25 – 27 under 35 U.S.C. § 103(a) is now moot in view of the amendments to Claims 23 and 27, which now recite compositions which mirror those set forth in amended Claim 1.

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Applicants therefore respectfully request withdrawal of the rejection under 35 U.S.C. § 103(a).

Conclusion

In light of the remarks and amendments presented herein, Applicants respectfully submit that Claims 1, 6, 8, 9, 23, 25 – 27, and 29 – 38 should be promptly allowed. Reconsideration and allowance are respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicants' undersigned attorney for further discussion.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By /Kelly L. McDow/

Signature

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Customer No. 27752

Registration No. 43,787
(513) 983-3798